

# EXHIBIT 2

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

CLUB VENTURES INVESTMENTS LLC,

Chapter 7  
Case No. 17-10060-shl

Debtor.

-----X

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                )

Scott Barbuto, deposes and states the following under the penalties of perjury:

1. I am the plaintiff in the personal injury case that was brought against Club Ventures Investments LLC d/b/a David Barton Gym (“David Barton”) in the Supreme Court of the State of New York, New York County, under Index number 150695/2013.

2. On April 23, 2012, my workout partner and I went to the lower level of David Barton’s gym to use the Smith Machine subject to the underlying lawsuit, which I had used one or two occasions prior to the occurrence. At such time, I had been a member of David Barton’s gym for approximately two years.

3. The safety latches on the Smith Machine were already positioned when we commenced our workout. I commenced a second set of exercises by lifting and unhooking the bar off the pegs and lifted the weight without difficulty. During my sets I was approximately lifting the same amount of weight that I was accustomed to lift when using other Smith machines

4. When I went to hook the bar with the weights on the Smith Machine, I was trying to use the mirror for feedback to position the hooks on the pegs. While looking into the mirror it was dark and it was hard to see the pegs as the hooks faced backwards in relation to the mirror.

5. After I rotated the bar with my wrist to latch it and I looked into the mirror as best as I could to confirm, the bar hooks appeared to be locked on the pegs. Since the bar looked secured and I felt the weight come off, I released the bar and proceeded to vacate the machine, when the weight came down and I got injured.

6. It is my belief that the weight came down on me, due to the false engagement of the bar hooks on the pegs as a result of the Smith Machine being defective and not properly maintained. I made sure that the hooks appeared latched on the pegs and the bar with the weights felt secure prior to releasing the same. I consider myself to be a safe and careful person. I have lifted weights since High School and used other Smith Machines without any incidents or sustaining any injuries prior to this occurrence.

7. As a result of the occurrence, I sustained multiple injuries, including bilateral SER 4 ankle fractures, tear of bilateral deltoid ligaments, tear of anterior and posterior tibiofibular ligaments, necessity for an Open Reduction Internal Fixation (ORIF) procedure, necessity for a further surgical procedure to remove the right ankle hardware, extensive physical therapy, functional limitations, decreased mobility, numbness, tingling, scarring, and continue to experience pain and swelling in my extremities

8. Consequently, a complaint was filed on my behalf on January 24, 2013, to recover for the serious and permanent personal injuries I sustained as a result of David Barton's negligence.


9. After almost four years of discovery and summary judgment motions, a trial was scheduled for January 23, 2017. However, David Barton filed for bankruptcy on January 12, 2017, which I have been advised automatically stayed my case.

10. I have been further advised, that David Barton is insured and that we will seek recovery within the insurance limits of the primary and excess coverage.

11. Given the serious nature of my injuries and the extensive litigation, I would suffer significant hardship if I was prevented from proceeding with my case expeditiously, particularly as it was close to trial, and be able to put this matter behind me. Defendant David Barton, on the contrary, will suffer no prejudice if my case was allowed to proceed to trial.

12. For such reason, and as further reasoned by my attorneys, I respectfully request for the Court to enter an Order lifting the bankruptcy stay on my personal injury action to enable me to continue with the litigation.

  
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SCOTT BARBUTO

Sworn to before me this  
26<sup>th</sup> day of January, 2017  
  
\_\_\_\_\_  
Notary Public

JENNIFER LEBRON (w/ogen)  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LE6075260  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES 6/03/20 18